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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 12, 2000

PETITION OF

AQUASOURCE UTILITY, INC.,

CASE NO. PUE000341

AQUASOURCE UTILITY/SL, INC.,

and

SHAWNEE LAND UTILITIES COMPANY, INC.,

For approval of the purchase of assets pursuant to the Utility Transfers Act and for certificates of public convenience and necessity pursuant to §§ 56-265.3 and 56-265.2 of the Code of Virginia

FINAL ORDER

On June 1, 2000, AquaSource Utility, Inc. ("AquaSource Utility"), and AquaSource Utility/SL, Inc. ("AU/SL") (together referenced as "AquaSource"),¹ and Shawnee Land Utilities Company, Inc. ("Shawnee Land") (collectively referenced as "Petitioners"), filed a petition requesting Commission approval pursuant to Chapter 5 of Title 56 of the Code of Virginia for AquaSource to acquire, and for Shawnee Land to dispose of, all of the water utility assets of the Shawnee Land Water System.²

¹ AU/SL is a wholly owned subsidiary of Sydnor Hydrodynamics, Inc., which is, in turn, a wholly owned subsidiary of AquaSource Utility. DQE, Inc., is the ultimate parent of AquaSource Utility/SL, Inc., and AquaSource Utility, Inc.

² Shawnee Land is a certificated public utility providing water service in Frederick County, Virginia.

Petitioners also request, pursuant to §§ 56-265.3 D and 56-265.2, authority to transfer and to issue to AU/SL any necessary certificates of public convenience and necessity to serve the territory currently served by Shawnee Land, to acquire the existing Shawnee Land facilities, and to construct new facilities necessary to return the Shawnee Land system to adequate service.³ In addition, AquaSource requests approval of a surcharge mechanism designed to recover the costs of financing the facilities improvements (estimated to be approximately \$150,000).

By letter dated June 9, 2000, Petitioners note that AU/SL proposes to continue billing customers on the existing tariff rates and terms and conditions of service of Shawnee Land. None of these rates or terms will change in the short term (during the repair phase), except that customers previously connected to the system who wish to be reconnected may do so without the payment of any connection fee through the end of 2002. After completion of the improvements as contemplated in the petition, AU/SL will begin billing the surcharge for a maximum period of five years. Nothing in the regular bill will change, but the surcharge will be added to it.

³ Petitioners submit that the new facilities, whose construction is necessary to return the Shawnee Land Water System to adequate service, are ordinary extensions or improvements in the usual course of business not requiring issuance of a certificate of public convenience and necessity pursuant to § 56-265.2.

On June 29, 2000, the Commission issued an Order directing Petitioners to give customers and public officials within Shawnee Land's service area notice of their petition and to provide interested persons with an opportunity to comment and request a hearing. The Commission also directed its Staff to review and analyze the petition and to file a report detailing its findings and recommendations.

AquaSource filed proofs of notice and service on August 15, 2000.

Pursuant to an August 25, 2000, Order, Staff filed its Report on September 25, 2000. In its Report, Staff noted that it received several comments on the petition. The comments focused on the following issues: the amount of the capital improvements that will be recovered through the surcharge; the class of customers subject to the surcharge; and the responsibility for restoration of roads and rights-of-way after completion of construction.

There was a question regarding the estimated amount for improvements necessary to provide reasonably adequate service. To address that concern, Staff included in its recommendations a proposed limitation on the amount of the improvements that would be subject to the surcharge.

There was also a concern regarding the applicability of the surcharge mechanism to availability customers. Staff reported

that, based on conversations with AquaSource, the surcharge would not apply to those customers. Staff noted, however, that the current tariff is unclear with regard to such applicability and that it recommends that AU/SL adopt the tariff attached to its Report. That tariff not only clarifies the applicability of the surcharge but updates and incorporates the rates, terms, and conditions of the existing tariff.

There were also concerns regarding the restoration of roads and rights-of-way that might be disturbed due to improvement and maintenance of the Shawnee Land Water System. In a letter dated September 11, 2000, counsel for AquaSource confirmed that AquaSource will restore those roadways to their prior condition. Staff added that AquaSource should also try to reach a reasonable understanding with the Shawneeland Sanitary District regarding the restoration of the roads and rights-of-way.

Staff found that the proposed transaction would not impair or jeopardize the provision of adequate service at just and reasonable rates. Staff stated that the transfer was essential to meet the needs of Shawnee Land's customers for adequate, safe, and reliable water service. In its Report, Staff recommended:

1. that the proposed transfer of assets from Shawnee Land to AquaSource be approved;
2. that AU/SL be granted pursuant to § 56-265.3 authority for the transfer of Shawnee Land's certificate of public

convenience and necessity that would authorize it to serve customers in the Shawneeland development in Frederick County, Virginia;

3. that AU/SL be granted a certificate pursuant to § 56-265.2 to acquire the existing Shawnee Land facilities and to construct new facilities to the Shawnee Land system;

4. that the monthly surcharge per water service customer be approved to allow AquaSource to recover the cost of the capital improvements and to allow the customers of the Shawnee Land system to receive reasonably adequate service;

5. that AU/SL be required to follow each of the seven steps of its marketing plan before the proposed surcharge can be levied;

6. that AU/SL be required to file quarterly reports with the Commission's Division of Energy Regulation on the progress of the capital improvements and the marketing plan;

7. that the surcharge mechanism be limited to the net present value of the revenue requirement requested by AquaSource for the \$150,000 in capital improvements, plus a maximum of \$25,000 in non-payroll related surcharge implementation costs such as legal fees, travel, and filing related fees; and

8. that, if the capital improvements exceed the \$150,000 outlined in the petition, AU/SL must inform Staff in writing of such expenditures and state the reasons for such improvements.

On October 2, 2000, AquaSource filed a Response to the Staff's Report. In its Response, AquaSource objected to the adoption of recommendation No. 7 referenced above. AquaSource stated that it should not "be prohibited from recovering amounts above \$150,000 in the surcharge if such additional amounts were necessary to achieve the ultimate goal of adequate service." In addition, AquaSource stated that recommendation No. 8 would require it to give Staff notice if it was necessary to spend more than the estimated amount. Such notice would enable other persons to contact Staff if they believed that adequate service would not be achieved by the proposed improvements or that the additional expenditures were not necessary to achieve such service.

Subsequently, by letter dated November 13, 2000, counsel for AquaSource requested the Commission to defer any action in this proceeding until after November 30, 2000. This would enable AquaSource to provide additional notice and allow customers to comment or request a hearing with respect to the information included in the attached notice.⁴

The notice advised customers that \$150,000 was an "estimate" of the amount necessary to restore adequate service, not a "capped" amount. AquaSource added that, if higher

⁴ The information included in the notice was designed to clarify any misunderstanding resulting from a newspaper article stating that the surcharge would be capped at the \$150,000 figure.

expenditures were necessary to restore adequate service, the surcharge would be based on the higher figure and, if expenditures were lower than the estimated amount, the surcharge figure would be calculated on the lower figure.

The Commission received seven comments in response to the additional notice. In their comments, persons with their own wells or with an undeveloped lot objected to paying any surcharge. There were no requests for hearing.

NOW THE COMMISSION, having considered the joint petition, comments, Staff's Report, the response thereto, and applicable law, is of the opinion that the above-captioned petition should be approved, subject to Staff's recommendations, as modified herein, and subject to certain conditions. We find that the public convenience and necessity requires that AquaSource acquire the assets of the Shawnee Land Water System. We also believe that such transfer requires our approval pursuant to Chapter 5 of Title 56 of the Code of Virginia. We find that the transfer of the assets of the Shawnee Land Water System will not impair or jeopardize adequate service at just and reasonable rates. Moreover, we find that it is in the public interest for AU/SL to provide water service to the Shawneeland development in Frederick County, Virginia, and that Shawnee Land's current rates and the proposed surcharge do not appear to be unjust and unreasonable. We will, therefore, approve those current rates

and approve the proposed surcharge, subject to certain recommendations and conditions referenced herein. We agree with Petitioners that the proposed construction of new facilities constitutes ordinary extensions or improvements in the usual course of business and, as such, does not require a certificate pursuant to § 56-265.2.

We note the comments in response to the latest notice from AquaSource. Those comments, however, are from persons who have water service available to them but are not customers of Shawnee Land. Such persons are not, therefore, subject to the proposed surcharge applicable only to water users.

We agree with the Staff that the joint petition should be approved. We will, among other things, accept Staff's recommendations with the exception of recommendation No. 7 referenced above. While we will not accept Staff's recommendation to limit the expenditures subject to the surcharge, we expect AquaSource to spend no more than is necessary to restore the system to a condition that will enable it to provide its customers with "reasonably adequate service". In the event that it appears that such expenditures will exceed the estimated amount, AU/SL shall notify Staff. This is consistent with above-referenced recommendation No. 8.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-89 and 56-90 of the Code of Virginia, Shawnee Land Utilities Company is hereby granted authority to dispose of the assets of the Shawnee Land Water System, as described in the petition.

(2) AquaSource is hereby authorized to acquire from Shawnee Land the existing assets of the Shawnee Land Water System. The certificate issued to Shawnee Land Utilities Company to provide water service in the Shawneeland development of Frederick County is hereby transferred to AquaSource Utility/SL, Inc.

(3) AU/SL shall submit a Report of Action to the Commission's Director of Public Utility Accounting no later than sixty (60) days after the closing of the transaction; such report shall detail the date of transfer, sales price, and accounting entries reflecting the transfer.

(4) Shawnee Land Utilities Company's certificate of public convenience and necessity, Certificate No. W-175, is hereby cancelled.

(5) AquaSource Utility/SL, Inc., shall be granted a certificate of public convenience and necessity, Certificate No. W-304, authorizing it to provide water service to the Shawneeland development in Frederick County, Virginia.

(6) AU/SL's proposed rates, rules, and regulations of service are hereby approved.

(7) AquaSource's proposed surcharge is hereby approved as detailed on Attachment 3 of the petition, subject to the conditions detailed herein.

(8) AU/SL shall follow each of the seven steps of its marketing plan before implementing the proposed surcharge.

(9) AU/SL shall submit a rate of return statement for the Shawnee Land Water System to the Commission's Division of Public Utility Accounting for each year the surcharge is in effect. Surcharge revenues shall be adjusted from an annualized (booked) basis to a billed basis. Such submission shall be no later than forty-five (45) days prior to the implementation of any surcharge adjustment.

(10) If AU/SL overearns (excess of 10% return on equity for each period), the net excess shall be used to reduce any net under-recovery of the surcharge.

(11) If AU/SL under collects on both a total return on equity and a surcharge basis, it shall recover the lesser amount in future annual surcharge adjustments.

(12) AU/SL shall submit quarterly reports to the Commission's Division of Energy Regulation on the progress of the capital improvements and the marketing plan.

(13) On or before March 1, 2001, AU/SL shall file a revised tariff incorporating the modifications referenced the attachment to Staff's Report.

(14) There being nothing further to be done, this matter is hereby dismissed from the Commission's docket of active cases.